

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5313 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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VITHALBHAI KACHRABHAI PATEL

Versus

STATE OF GUJARAT NOTICE TO BE SERVED ON

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Appearance:

MR PK JANI for Petitioner  
Ms Manisha Lavkumar, AGP, instructed by  
M/S MG DOSHIT & CO for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the order dated 12.9.1986 (Annexure-I) of the State Government dismissing the petitioner, Ex. Sub-Divisional Soil Conservation Officer, Class-II, from service after holding a departmental enquiry.

2 The petitioner joined State service as an Agricultural Supervisor in the year 1964. The petitioner was thereafter selected and appointed on the post of Sub-Divisional Soil Conservation Officer in the year 1967. The petitioner was served with charge sheet dated 30.7.1981 in connection with certain soil conservation works which were carried out in the year 1975-76. There were three charges levelled against the petitioner which read as under:-

- (i) For preplanned conspiracy with a view to misappropriating government funds by recording imaginary measurements of the work done and by creating false (nominal) records.
- (ii) Observing unpardonable negligence in the discharge of duties; and
- (iii) For noncompliance with technical directions (instructions) and Rules and Regulations of the Department.

3. The inquiry against the petitioner was a part of the joint inquiry against two other employees as well who were the petitioner's subordinates being an agricultural supervisor and an agricultural assistant. At the conclusion of the inquiry, the Inquiry Officer found that the petitioner's subordinates were guilty of misappropriation of public funds, but the inquiry officer submitted his separate report dated 31.1.1983 giving the following findings in respect of the petitioner:-

- (i) The charge for misappropriation was not proved though the petitioner could be said to be negligent in supervision.
- (ii) The petitioner could not be said to be guilty of unpardonable negligence and that the charge against the petitioner may be considered in light of the fact that the petitioner was required to attend to various works and that there was heavy burden of scarcity relief operations where quick payment to the labourers was required to be ensured, various meetings were required to be attended to and all sorts of problems being faced by the landlords and labourers were required to be resolved, various places were required to be visited and the day-to-day office routine work was required to be attended to, hence, the petitioner could not be said to have observed unpardonable negligence in his duties.

(iii) The third charge was proved as the petitioner could not have delegated the work of technical evaluation of the plans and estimates to his subordinates.

4. The petitioner was given a second show-cause notice dated 13.4.1983 calling upon the petitioner to show cause as to why the petitioner should not be dismissed from service. The petitioner submitted his reply dated 1.5.1983. After considering the same, the disciplinary authority, that is, the State Government proceeded on the basis that the charges nos.1 and 2 were partly proved and charge no.3 was wholly proved and therefore, the State Government passed the order dated 12.9.1986 dismissing the petitioner from service. It is the aforesaid order of the State Government which is under challenge in this petition.

5. Mr P.K.Jani, learned counsel for the petitioner, has challenged the impugned order on the following grounds:-

5.1 The order of penalty was passed in an inquiry, the initiation of which was vitiated by gross delay inasmuch as the alleged misconduct took place in the year 1975-76 whereas the charge sheet was issued to the petitioner in July 1981.

5.2 The petitioner suffered serious prejudice because of the joint inquiry held against the petitioner and the petitioner's two subordinates who were found to be actually guilty of charge of misappropriation and were therefore dismissed for that charge whereas the petitioner was not found to be guilty of the said charge of misappropriation.

5.3 Everything revolved around the measurements of the works which were to be carried out and which were allegedly not carried out. In the year 1980 Mr J.K.Patel an officer of the agricultural department, had gone to the various sites and carried out site inspection. For such site inspection two other co-delinquents who were subordinates to the petitioner i.e. Agricultural Supervisor and Agricultural Assistant were called but the petitioner was not called. This so called evidence was collected in absence of the petitioner.

5.4 The report submitted by Mr J.K.Patel after site inspection and in the nature of preliminary report was not supplied to the petitioner in spite of specific demands made by the petitioner as per letters dated

28.8.1981 (Annexure-B) and 24.11.1981 (Annexure-C) nor were the copies of the statements recorded during the preliminary inquiry supplied to the petitioner. Thus, the entire inquiry proceeded on the basis of the measurements recorded by the officer holding the preliminary inquiry and their comparison vis-a-vis the measurements recorded in the books maintained by the petitioner's subordinates out of which only 5% work was required to be physically inspected by the petitioner. The petitioner, therefore, suffered serious prejudice at the aforesaid inquiry.

5.5 In any view of the matter, the impugned order of penalty was vitiated by non application of mind. This disciplinary authority proceeded on the basis as if charge no.1 about misappropriation was partly proved, even though the Inquiry Officer had clearly exonerated the petitioner of the charge of misappropriation and had found the petitioner guilty of much lesser charge of negligence only. Even here the Inquiry Officer did not find the petitioner guilty of the charge of unpardonable negligence but on the contrary the Inquiry Officer had himself pointed out in the report various mitigating circumstances to show that the negligence could not be said to be unpardonable.

6. On the other hand, learned A.G.P. Ms Manisha Lavkumar has made the following submissions:-

6.1 The inquiry was initiated in the year 1981 because the acts of misconduct pertained to scarcity relief operations which were launched on a very wide scale throughout the State in the year 1975-76 and 1976-77 and, therefore, such acts of misconduct which might have taken place at various places could not have been detected immediately. Any adverse finding on this issue may also have an impact on the inquiry already held against other delinquents who are already found to be guilty of the serious charge of misappropriation.

6.2 As regards joint inquiry, it is submitted that since the allegations levelled against the petitioner and two of his subordinates were in respect of the same project, holding a joint inquiry saved time and labour of all concerned and it also avoided any conflicting findings being given.

6.3 Since the petitioner was not directly involved in the execution of works and Agricultural Supervisor and Agricultural Assistant were directly connected with the same, the Officer making the preliminary inquiry may not

have found it to be necessary to keep the petitioner present while making the on the site inquiry.

6.4 Regarding non supply of the report of the preliminary inquiry officer it is stated that in response to the petitioner's letter dated 28.8.1981 the Joint Director of Agriculture had made it clear to the petitioner that the records and documents called for by the petitioner were not relevant to the charges levelled against him and that in any view of the matter at the time of submitting his reply to the charge sheet the petitioner was not entitled to get the documents on which the petitioner wanted to reply.

6.5 There was no non application of mind while passing the order of penalty as the second show-cause notice was accompanied by the Inquiry Officer's report and the Inquiry Officer himself had stated in his report that charge no.1 was partly proved so also the Inquiry Officer had not expressly exonerated the petitioner from the second charge.

7. As far as the first ground of challenge is concerned, there was delay of 4 years in initiation of the inquiry, it cannot be overlooked that at the relevant time the State Government had undertaken scarcity relief operations on a large scale and since it would take sometime for the complaints to reach the State Government and since detection of irregularities involve physical measurements of large number of sites, in the facts and circumstances of the case, the delay in initiation of the inquiry cannot be branded as so unreasonable as to vitiate the inquiry more particularly when it was the same inquiry which revealed that two subordinates of the petitioner were guilty of misappropriation of public funds by recording false measurements. The first ground of challenge, must, therefore fail.

8. Similarly, the challenge on the ground that the joint inquiry prejudiced the petitioner cannot be upheld since the material which was the subject matter of the inquiry was the same measurement books and other relevant technical details, it was not necessary to bifurcate the inquiry. Holding fragmented inquiries would have resulted into loss of unnecessary time and energy of all concerned. The very fact that the Inquiry Officer has submitted a separate report shows that the Inquiry Officer was alive to the nature of the charges against the petitioner and that they were quite distinct from the charges levelled against the petitioner's subordinates. The Court is unable to find any prejudice caused to the

petitioner because of the joint inquiry having been held.

9. However, Mr Jani is on firmer ground when he challenges the proceedings of the inquiry on the ground that the petitioner was neither called by the preliminary inquiry officer, Mr J.K.Patel, at the time of site inspection nor was the petitioner given a copy of the preliminary inquiry report. Everything revolved around the charge that the works alleged to have been carried out by the petitioner's subordinates and supervised by the petitioner were not actually carried out. Physical measurements of the works were, therefore, of utmost importance and the petitioner's physical presence at the time of site inspection would have certainly enabled the petitioner to point out the relevant sites which were inspected by the petitioner and as to how the charge of lack of negligence in supervision was without substance. The petitioner's physical presence at the time of on the site inspection would have enabled the petitioner to point out all the relevant facts regarding physical aspects of the charge. So also since the inquiry officer has heavily relied on the report of Mr J.K.Patel while finding the petitioner's subordinates guilty of the charges levelled against them and the allegation which is found to have been proved against the petitioner is negligence or lack of supervision, the report of the preliminary inquiry officer prepared pursuant to the on the site inspection would have enabled the petitioner to raise all the defences available to him on facts. It would have certainly enabled the petitioner to cross-examine the departmental witnesses and to place his own defence before the Inquiry Officer in a very effective manner. It must, therefore, be held that the impugned order was passed in violation of principles of natural justice.

10. Ordinarily when the Court finds some substance in the contentions regarding violation of principles of natural justice in a departmental inquiry, what the Court normally does is to set aside the order of penalty and to direct the authorities to hold the inquiry from a particular stage in accordance with the principles of natural justice. It is, however, not necessary to adopt the aforesaid course of action in the facts of the present case because, apart from the fact that the petitioner has in the meantime already attained the age of superannuation, there is also considerable substance in the contention urged on behalf of the petitioner that the order of penalty is vitiated by non application of mind. The inquiry officer has clearly found that the charge of misappropriation was not proved though the

petitioner had failed in his duty of supervision. So also regarding the second charge of unpardonable negligence, the inquiry officer had given the finding that there were several mitigating factors which prevented the negligence from being branded as unpardonable. The inquiry officer had suggested that those factors were required to be taken into consideration. However, at the time of giving final finding of guilt against the petitioner, the Disciplinary Authority i.e. the State Government had proceeded on the footing that the charge of dishonesty as well as charge of unpardonable negligence were partly proved. In saying so the State Government never expressed any disagreement with the findings of the inquiry officer. In this view of the matter, in fairness to the petitioner the State Government ought to have noticed that the charge of dishonesty was not proved. So also the inquiry officer had in so many words observed that the negligence was not unpardonable. In the facts and circumstances of the case, the respondents are not in a position to show as to how the extreme penalty of dismissal could be said to be proportionate to the charge/s held to be proved against the petitioner. The impugned order of penalty must therefore be declared as illegal and vitiated by non application of mind.

11. That takes us to the consideration of the question whether on the aforesaid findings given by the Inquiry Officer and adopted by the State Government the penalty of dismissal is liable to be interfered with. It is true that the Courts ordinarily do not interfere with the order of penalty by weighing the misconduct and the penalty in golden scales and the Courts could interfere only if the penalty is shockingly disproportionate. In the facts and circumstances of the present case, in view of the clear finding given by the inquiry officer that the charge of misappropriation was not proved and that the petitioner himself was not entrusted the duty of recording the physical measurements of the works but the petitioner as the Sub-Divisional Soil Conservation Officer was required to supervise all agricultural assistants who were the men on the field and there were intermediate supervisors called Agricultural Supervisors and in view of the fact that the inquiry officer has himself observed that there were several mitigating circumstances which would preclude the negligence from being branded as unpardonable, the penalty of dismissal must be held to be shockingly disproportionate to the misconduct proved against the petitioner. A perusal of the inquiry officer's report as well as the order of penalty indicates that what had weighed with the

disciplinary authority was that the impression that charges nos.1 and 2 which were more serious were thought to be partly proved. The above discussion already points out that the said impression was clearly misconceived.

12. The next question is whether the Court should remand the matter to the authorities to reconsider the quantum of penalty which is the normal course to be adopted. In the facts and circumstances of this case, it transpires that the petitioner has already reached the age of superannuation and, therefore, there is no question of passing any order of reinstatement and that even if the matter were to be remanded to the authorities on the question of quantum of penalty, the authorities would only have the power of reducing the petitioner's pension. The petitioner completed the age of 58 years sometime in 1997 and the petition has remained pending since 1986. In this set of circumstances, the Court considers it to be just and proper that while setting aside the impugned order of penalty the Court directs that the petitioner shall not be paid a portion of backwages.

13. Accordingly, the petition is partly allowed. The impugned order dated 12.9.1986 at Annexure-A is declared as illegal and is hereby quashed and set aside. The respondents are directed to treat the petitioner as in continuous service from 12.9.1986 till the date of superannuation for all purposes including counting of pensionable service and pay fixation but the petitioner shall be paid only 75% of the back wages in the post of Sub Divisional Soil Conservation Officer for the period from 12.9.1986 till the date the petitioner would have reached the age of superannuation. The petitioner's pension and other retiral benefits shall also be computed and paid expeditiously.

14. The aforesaid directions shall be complied with within three months from the date of the receipt of a certified copy of this order or the writ of this Court, whichever is earlier.

15. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah, J.)  
(mohd)